

BRB No. 93-2281 BLA-A

PAUL PETRYLAK)
)
 Claimant-Petitioner)
)
 v.)
) DATE ISSUED:
 NUMBER ONE CONTRACTING COMPANY)
)
 Employer-Respondent)
 Cross-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-In-Interest) DECISION and ORDER

Appeal of the Decision and Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for employer.

Before: SMITH, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer cross-appeals the Decision and Order (91-BLA-1065) of Administrative Law Judge Paul H. Teitler denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).¹ The administrative law judge

¹ Claimant appealed the denial of benefits and employer cross-appealed. However, claimant failed to submit a brief or respond to the Board's show cause order. Thus, claimant's appeal was dismissed by the Board's order dated May 29, 1994. In its order, the Board noted that employer's appeal remains pending.

credited claimant with six and one quarter years of coal mine employment, and based on the filing date, May 16, 1990, considered the claim pursuant to the provisions of 20 C.F.R. Part 718. The administrative law judge found the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203. The administrative law judge, however, further found the evidence of

record insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), and also found no material change in condition pursuant to 20 C.F.R. §725.309(c). Accordingly, benefits were denied. Employer appeals, urging that the administrative law judge's finding at 20 C.F.R. §718.202(a)(1) be vacated. The Director, Office of Workers' Compensation Programs (the Director), has not responded to this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer's first contention of error is that the administrative law judge erred by implicitly applying the "true doubt" rule to the x-ray evidence at 20 C.F.R. §718.202(a)(1). We disagree. The administrative law judge did not apply the "true doubt" rule to the x-ray evidence. Instead, the administrative law judge noted the many conflicting x-ray interpretations and properly resolved them in light of the readers' qualifications. See *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); Decision and Order at 6-8. After weighing the x-ray evidence, the administrative law judge found that it established the existence of simple pneumoconiosis, a finding supported by substantial evidence. Accordingly, employer's contention of error on this issue is rejected.

Employer next contends that the administrative law judge mischaracterized the x-ray evidence by counting two negative interpretations, both 0/1, as positive readings. We disagree. The administrative law judge did not classify the two negative x-ray readings in question as positive. The administrative law judge stated in his Decision and Order that "Dr. Sundheim and Kibelstis read the February 28, 1991 x-ray as 0/1 the last negative category," and judging from his tally of the positive and negative readings, the administrative law judge counted these two interpretations as negative. See Decision and Order at 8. Thus, we reject employer's contention of error on this issue.

Because the administrative law judge properly evaluated and weighed the x-ray evidence at 20 C.F.R. §718.202(a)(1), his finding that the weight of the x-ray evidence established the existence of pneumoconiosis is affirmed.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

_____NANCY S.
DOLDER
Administrative Appeals Judge